STATE OF MICHIGAN

COURT OF APPEALS

ROBERT BORCHAK and DIANE BORCHAK,

Plaintiffs-Appellants,

v

MEIJER, INC.,

Defendant-Appellee.

UNPUBLISHED
February 23, 2006

No. 265728
Macomb Circuit Court
LC No. 04-001085-NO

Before: Cooper, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Plaintiffs appeal by right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Robert Borchak was examining hunting goods in an aisle on defendant's premises when a suitcase displayed on a shelf in an adjacent aisle fell and hit him on the shoulder, causing injury. An incident report completed by defendant stated that Robert Borchak claimed that customers in the adjacent aisle pushed the suitcase off the shelf.

Plaintiffs filed suit alleging that defendant breached its duty to design and stock its shelves in a reasonably safe manner so as to prevent merchandise from falling from the shelves. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), alleging that no evidence established that its actions proximately caused Robert Borchak's injury. The trial court agreed and granted the motion.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). A prima facie case of negligence may be based on legitimate inferences, provided that sufficient evidence is produced to take the inferences "out of the realm of conjecture." *Ritter v Meijer, Inc*, 128 Mich App 783, 786; 341 NW2d 220 (1983).

Proof of causation requires both cause in fact and proximate cause. Cause in fact requires that the injury would not have occurred but for the negligent conduct. *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994). Cause in fact may be established by circumstantial evidence, but such proof must be subject to reasonable inferences, and cannot consist of mere speculation. *Id*. at 163-164. When an explanation is consistent with known facts but not deducible from them as a reasonable inference, it is mere conjecture. *Id*. at 164, citing *Kaminski v Grand Trunk W R Co*, 347 Mich 417, 422: 79 NW2d 899 (1956). Proximate cause is that which, in a natural and continuous sequence, unbroken by new and independent causes, produces the injury. *McMillian v Vliet*, 422 Mich 570, 576; 374 NW2d 679 (1985). A defendant's negligence must be found to be the factual cause of a plaintiff's injuries before it can be found to be the proximate cause of the injuries. *Skinner, supra* at 163.

Plaintiffs argue that the trial court erred by granting defendant's motion for summary disposition. They assert that defendant's liability is premised on its failure to design its storage shelves and display its merchandise in a reasonably safe manner, that the reason the suitcase fell from the shelf is irrelevant in determining whether defendant breached its duty of reasonable care, and that but for defendant's failure to display the merchandise in a proper manner, the injury to Robert Borchak would not have occurred.

We affirm. In order to establish a prima facie case of negligence, plaintiffs were required to demonstrate that a question of fact existed as to whether defendant's conduct proximately caused Robert Borchak's injury. *Stefan v White*, 76 Mich App 654, 661; 257 NW2d 206 (1977). There was no evidence that defendant breached its duty and caused Robert Borchak's injury. Robert Borchak testified that he did not know how the suitcase was positioned on the shelf before it struck him, and that he assumed that customers in the adjacent aisle caused the suitcase to fall from the shelf. Speculation does not create an issue of fact regarding causation. *Id*. The possibility that a breach of duty by defendant caused Robert Borchak to sustain injuries is not sufficient to establish causation. *Id.; Skinner, supra* at 165. The trial court properly decided the issue as one of law and granted summary disposition. *Reeves v K-Mart Corp*, 229 Mich App 466, 480; 582 NW2d 841 (1998).

We affirm.

/s/ Jessica R. Cooper
/s/ Kathleen Jansen
/s/ Jane E. Markey